

EXHIBIT 1

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO

3
4 FUSE CHICKEN, LLC,
5 Plaintiff,

6
7 vs. Case No. 5:17-cv-01538-SL

8
9 AMAZON.COM, INC.,
10 Defendant.

11 -----
12
13 ***HIGHLY CONFIDENTIAL***

14
15 Videotaped deposition of
16 DANIEL C.K. CHOW
17 December 20, 2018
 9:13 a.m.

18
19 Taken at:
 Ulmer & Berne, LLP
20 65 East State Street, Suite 1100
 Columbus, Ohio

21
22 Kimberly A. Kaz,
23 RPR, Notary Public
24 Job No. 3173877
25 Pages 1 - 295

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1 THE VIDEOGRAPHER: We're on the
2 record at 9:13. Today's date is the
3 December 20th, 2018. This is the matter of
4 Fuse Chicken versus Amazon.com, Inc. This
5 deposition is taking place in Columbus, Ohio.

6 Would counsel please identify
7 themselves for the record?

8 MR. WATNICK: David Watnick of
9 Covington & Burling for Amazon.

10 MR. HALPER: Rick Halper of McKool
11 Smith for the plaintiff.

12 THE VIDEOGRAPHER: Court reporter,
13 please swear in the witness.

14 DANIEL C.K. CHOW, of lawful age,
15 called for examination, as provided by the
16 Federal Rules of Civil Procedure, being by me
17 first duly sworn, as hereinafter certified,
18 deposed and said as follows:

19 EXAMINATION OF DANIEL C.K. CHOW

20 BY MR. WATNICK:

21 Q. Good morning.

22 A. Good morning.

23 Q. Can you please state your name for
24 the record?

25 A. Daniel Chow.

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1 Q. This is -- you're referring to
2 Footnote 4; is that right?

3 A. Yes. Uh-huh.

4 MR. HALPER: Dave, if you're going
5 to jump into another exhibit, maybe we can take
6 a break just for a few minutes.

7 MR. WATNICK: Okay.

8 MR. HALPER: It's been almost an
9 hour.

10 THE VIDEOGRAPHER: Off the record,
11 10:06.

12 (Recess taken.)

13 THE VIDEOGRAPHER: We're on the
14 record, 10:22.

15 MR. HALPER: Counsel, before you
16 start, I think there was one answer that
17 Professor Chow wanted to clarify.

18 THE WITNESS: The question that was
19 asked was whether I've seen infringing or
20 counterfeit products with the Fuse Chicken
21 trademark. Not -- I've only looked at some
22 pictures, but from my reading of the deposition
23 of Jon Fawcett, the reading of the complaint
24 and my conversations with Jon, and also just
25 based upon my general 20 years of experience in

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1 this -- in this field, he told me that they
2 were -- Fuse Chicken products with -- or
3 counterfeit Fuse Chicken products with the
4 trademark on the packaging as well as on the
5 product. And as I said, based upon my own
6 experience in this matter, it's almost
7 irresistible, I think, for these people who are
8 making these products for them to also put the
9 trademark on the product.

10 Q. You haven't seen any of those,
11 though?

12 A. I've only actually looked at
13 several photographs, and not in photographs
14 that I've seen, but I understand that they
15 exist.

16 Q. You still have the copy of your
17 report in front of you?

18 A. Yes.

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[REDACTED]

4 Q. So I understand that, you know, in
5 your experience, you would expect where there's
6 a manufacturing operation in China, that a
7 counterfeiter may set up there; is that right?

8 A. I would say that's a pattern that
9 I've seen.

10 Q. Okay. Do you have any specific
11 evidence that that's what happened in this case
12 beyond your experience with this pattern?

13 MR. HALPER: Objection. Misstates
14 the testimony. Asked and answered.

15 THE WITNESS: I would say that it's
16 based upon my assessment of a number of
17 different factors, a number of different facts,
18 and -- and also based on my general experience.

[REDACTED]

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■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

4 Q. Are all the facts and evidence that
5 you've seen of -- specifically of Fuse Chicken
6 counterfeits being manufactured in China, are
7 they all included in the report?

8 MR. HALPER: Objection to form.

9 THE WITNESS: I'm -- to be honest
10 with you, that's very -- very -- I'm not sure.
11 I'm not sure. Prob- -- you know, probably not.
12 I'm not sure.

13 Q. Well, the -- the first source of
14 evidence you cite here I think is in
15 Footnote 4; is that right?

16 MR. HALPER: Objection. Vague.

17 THE WITNESS: Yeah. Well, it's --
18 it's -- it's an indicator, yes.

19 Q. Other than what's in Footnotes 4, 5
20 and 6, what facts about Fuse Chicken have you
21 seen that have allowed you to form this
22 conclusion?

23 MR. HALPER: Objection. Asked and
24 answered. Lacks foundation.

25 THE WITNESS: I think also just

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1 talking -- talking to Jon, talking -- looking
2 at his deposition, looking at the complaint,
3 those are some of the things which also weighed
4 into my opinion, and then my experience.

5 Q. Any other documents produced in
6 this case?

7 A. I don't recall.

8 Q. Any other web pages other than the
9 one you cite here?

10 A. The -- there -- I don't recall.
11 There may be -- there -- there may be others.

12 Q. And what did -- what, talking from
13 Jon Fawcett, did you learn that allowed you to
14 conclude that China is likely the source of the
15 bulk of counterfeiting infringing of Fuse
16 Chicken products?

17 MR. HALPER: Objection to form.

18 THE WITNESS: My general
19 conversation with him encompassed his efforts
20 at locating counterfeits, his discussions of
21 his operations in China. I mean, I am very
22 confident that -- I am very confident that
23 these products are coming from China.

24 Q. Do you see Paragraph 10 in the
25 report?

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1 reputable news organizations and publications,
2 and that they would vet the statements which
3 are being made in stories of this type, check
4 the accuracy of the factual assertions in these
5 articles. I believe they will -- also would
6 give Amazon a chance to respond, and I believe
7 that in one of the articles, Amazon was invited
8 to give comment, but declined. So I have no
9 reason to believe that these articles are
10 inaccurate.

11 Q. Are you aware of Amazon disputing
12 the statements in that article?

13 MR. WATNICK: I'm going to object
14 as beyond the scope of the report.

15 Q. You can answer.

16 A. I am not aware that Amazon
17 objected, and I do recall that Amazon was
18 invited to give comment in one of the articles
19 and declined.

20 Q. You were also asked, at least with
21 respect to one of the articles, maybe both,
22 whether you thought the author knew what he was
23 talking about. Do you recall that?

24 A. Yes, I do.

25 Q. Do you believe that the authors of

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1 these articles knew and understood what they
2 were talking about when they wrote what they
3 wrote in those articles?

4 A. Yes, I do. I believe that
5 reputable news organizations and publications
6 such as these would hire professionals who were
7 competent and had knowledge of the subject
8 matter on which they were writing. I believe
9 that these -- this indicates to me that these
10 people knew what they were talking about, and I
11 believe that they do.

12 Q. Were you asked by Fuse Chicken or
13 its counsel, in connection with your work and
14 report in this case, to quantify the amount of
15 counterfeiting of Fuse Chicken products?

16 MR. WATNICK: Object. Beyond the
17 scope of the report.

18 THE WITNESS: No, I was not.

19 Q. Do you recall earlier, you
20 testified that you -- it is your opinion that
21 you doubt that you -- that the cable data
22 products were manufactured in locations outside
23 of China?

24 A. Yes.

25 Q. What was the basis for your opinion

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1 in that regard?

2 A. Based on my experience,
3 counterfeiters usually arise in proximity to
4 the original legitimate manufacturer. They
5 arise in China in proximity to the original
6 manufacturer because of the prevalence of
7 counterfeiting and a business and legal culture
8 which supports it.

9 Based upon my experience, I
10 would -- I would say that the counterfeiter
11 would be one in proximity to the original
12 manufacturer, meaning that they would be in
13 China, and it would seem very unlikely to me
14 that there would be a counterfeiter in the
15 United States, based upon those factors.

16 Q. And are you aware of evidence
17 suggesting that the cable data products were
18 made outside of China?

19 A. No.

20 Q. Why are your opinions that you've
21 offered and -- today and indicated in your
22 report relevant to this case?

23 A. Well, in order to understand Fuse
24 Chicken's case, it is necessary to put the case
25 in the larger context, and the larger context

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1 of the case involves understanding
2 counterfeiting in China because these
3 counterfeit products are the source of --
4 China's the source of these counterfeit
5 products, and they've been able to enter the
6 United States through Amazon's website.

7 And in addition to this, it is
8 important to understand Amazon's important role
9 in facilitating the entry of Chinese
10 counterfeits onto the U.S. market, that, in
11 fact, Amazon has created what I've called a
12 paradise for counterfeiters by giving them what
13 they've always wanted, which is a legitimate
14 distribution channel that they can use to reach
15 retailers and end use consumers. This is
16 something they've never had before, and they
17 have now, which I believe has really opened the
18 floodgates for counterfeits to -- to reach the
19 U.S. market.

20 And it's really -- to understand
21 this whole situation, the entire background and
22 the context that really enables one to
23 understand Fuse Chicken -- Fuse Chicken's
24 problem with counterfeits which originate in
25 China and make their way into the United States

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REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Fairfield.)

I, Kimberly A. Kaz, RPR, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DANIEL C.K. CHOW, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 16th day of January, 2019.



Kimberly A. Kaz, RPR, Notary Public
within and for the State of Ohio
My commission expires March 31, 2023.

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1 I declare under penalty of perjury
2 under the laws that the foregoing is
3 true and correct.

4
5 Executed on February 15, 2019,
6 at Columbus, Ohio.

7
8
9
10
11 Daniel C. R. Chow

12 WITNESS SIGNATURE